

REQUEST FOR PROPOSALS

CONSULTANT SERVICES TO ASSIST IN PROJECT
CONTROLS AND DELIVERY

FOR THE
I-680 SMART CARPOOL LANE PROJECT

Issued by:

Alameda County Congestion Management Agency

July 28, 2006

RESPONSES DUE:
August 28, 2006

Alameda County Congestion Management Agency
1333 Broadway, Suite 220,
Oakland, CA 94612

Request for Proposals (A06-020)

Consultant Services to Assist in Project Controls and Delivery

For the

I-680 Smart Carpool Lane Project

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Assist in Project Controls and Delivery

For the

I-680 Smart Carpool Lane Project

SECTION 1: INTRODUCTION AND OVERVIEW

The Governor of California signed AB 2032 in September 2004 to authorize the design, construction, implementation and operations of the Sunol Smart Carpool Lane (also known as the I-680 Smart Carpool Lane) as a four-year demonstration project. The legislation established a Joint Powers Authority, the Sunol Smart Carpool Lane JPA (SSCL JPA), as the administering agency to oversee all phases of the Smart Carpool Lane from design to on-going operations. The Joint Powers Authority was executed in January 2006. The Authority Board of Directors is comprised of elected officials representing the Alameda County Transportation Improvement Authority (ACTIA), the Santa Clara Valley Transportation Authority (VTA), and the ACCMA.

The ACCMA was designated as the Managing Agency for the project. The ACCMA has been working in cooperation with Caltrans, California Highway Patrol and the Bay Area Toll Authority on the design and operation of the Smart Lane. A Management Steering Committee representing the aforementioned participating agencies is providing technical oversight.

The project will convert the existing southbound HOV Lane over Sunol Grade into a High Occupancy Toll lane by implementing an Electronic Toll System (ETS) in the lane as Caltrans widens the overall facility to standard widths.

The project is in the preliminary design phase. The environmental documentation and Project Study Report/Project Report have been approved by Caltrans and FHWA. An Electronic Toll Systems (ETS) Engineer consultant has been retained and is in the process of developing the requirements for the electronic toll system.

This project will be funded by a combination of Federal funds and funds from ACTIA's Measure B.

Project Description:

In order to operate the Smart Carpool Lane, there are two primary components to be built:

- a) HOV lane constructed for Toll Operation (Smart Lane roadway work), and
- b) Electronic Toll System (hardware and software).

a) Smart Carpool Lane Roadway Work

The Smart Carpool Lane roadway work to be included in the Caltrans HOV lane widening contract includes:

- o Electrical work,
- o Poles and controller cabinets,
- o Traffic monitoring stations,
- o Enforcement equipment and areas,
- o Changeable message signs,
- o Barrier-mounted signs, and
- o Striping.

b) Smart Carpool Lane Electronic Toll System

There are options for how to design, develop, implement, operate and maintain the ETS, which must be analyzed so that an approved plan for development and implementation can be documented. The ETS must be compatible with the Bay Area's FASTRAK system, so that a patron can use any toll facility within the State.

The ETS development work includes, but is not limited to:

- o a documented operations and maintenance strategy,
- o the toll equipment design and selection,
- o the enforcement strategy and the required equipment,
- o the configuration of the equipment on the road,
- o the data communication system selection,
- o the back office hardware to operate the Smart Lane and to collect the tolls,
- o the software to operate the Smart Lane and to collect the tolls,
- o the necessary changes to the Bay Area Toll Authority's (BATA's) Service Center software, and
- o an operations center.

The major milestones for the project are shown below.

Milestone	Finish Date
Environmental Document	Approved 1-06
PSR/PR	Approved 3-06
35% Engineering	6-06
65% Engineering	11-06
95% Engineering	1-07
Advertise and Open Bids	12-07
ETS Implementation	8-07 begin
(Design and Deployment)	12-09 finish
Construction of Roadway Work	2-08 begin
	12-09 finish
Open to Traffic	Early 2010

SECTION 2: SERVICES TO BE PROVIDED

The ACCMA intends to retain a qualified professional firm/team to assist in project controls, scheduling and monitoring in order to deliver the I-680 Smart Carpool Lane. The term of the contract as a result of this RFP will be a two-year base term with up to two one-year extensions. The CMA, at its sole discretion, may or may not exercise any of the extensions. Experience on systems engineering, electronic toll systems, and/or HOT Lanes is desirable.

For the consultant work effort, the consultant shall be familiar with and responsible for providing and performing the following tasks and activities. Additional tasks may be added as the ACCMA/JPA determines necessary.

Scope of Services to be Provided

The scope of services to be included in your proposal shall include preparation of written deliverables that address that following activities.

1. Technical Reviews – review of technical documents prepared to design and implement the electronic toll system. The technical documents will be prepared by the System Integrator with oversight from the Systems Manager.
2. Schedule Monitoring and Update – update existing base line schedule and monitor critical path items.
3. Cost engineering/Cost control – assist in monitoring project costs with programmed funds and approved funding plan review cost estimates for roadway and electronic toll system; review procurement process for compliance with Caltrans and FHWA requirements.
4. Develop Agreements – assist in the development of agreements with Caltrans, California Highway Patrol and Bay Area Toll Authority
5. Strategic Project Delivery – provide strategic input on meetings with stakeholders, elected

- officials, Business, Housing and Transportation and other State departments to continue support of the project.
6. Constructability/Bid-ability Reviews – review plans, specifications and estimates packages at various stages; prepare recommendations and/or modifications to improve packages
 7. Attendance at Project Team meetings, PDT meetings and meetings of the Management Steering Committee and Joint Powers Authority.
 8. Procurement Assistance – assist with the review of proposals and/or selection of consultants for system integration and other professional services as needed for delivery of the Smart Lane.
 9. Written Reports – prepare written reports or documentation as needed.

SECTION 3: SBE AND LBE REQUIREMENTS

ACCMA has adopted a Small Business Enterprise (SBE) Policy, pursuant to which the ACCMA encourages all prime contractors to utilize qualified SBE subcontractors on ACCMA projects, ACCMA promotes the direct purchase of goods from qualified SBEs by utilizing SBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, ACCMA seeks the utilization of qualified SBEs when such SBEs are available. All prime contractors are required to report on SBE usage during the term of each contract, using a form provided by ACCMA.

For purposes of ACCMA's SBE Policy, an SBE shall be a "small business" within the meaning of 13 CFR Part 121 and California Government Code Section 14837. In the event that the ACCMA's SBE Policy conflicts with any Federal, State or other funding source's programs, policies, regulations or requirements, ACCMA shall make the SBE Policy consistent with said funding source's programs, policies, regulations and requirements to the extent permissible by law. ACCMA's SBE Policy is neutral as to race, ethnicity, national origin, age, sex, religion, sexual orientation and other protected classes.

ACCMA has also adopted a Local Business Enterprise (LBE) Policy, pursuant to which the ACCMA encourages all prime contractors to utilize qualified LBE subcontractors on ACCMA projects. ACCMA promotes the direct purchase of goods from qualified LBEs by utilizing LBE vendors when such vendors are available and the price of the goods sought is reasonable, and, for professional services contracts, ACCMA seeks the utilization of qualified LBEs when such LBEs are available. All prime contractors are required to report on LBE usage during the term of each contract, using a form provided by ACCMA.

SECTION 4: DBE PROGRAM PLAN / DBE AVAILABILITY ADVISORY

As noted above, this contract will be partially funded with federal funds. As a condition of receiving federal funds, ACCMA has signed an agreement with Caltrans pursuant to which ACCMA has agreed to implement Caltrans' Disadvantaged Business Enterprise (DBE) Program

Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), Title 49, Part 26, Code of Federal Regulations requirements.

Pursuant to the DBE Program Plan and ACCMA's agreement with Caltrans, ACCMA has determined that DBEs can reasonably be expected to compete for the subcontracting opportunities in this RFP, and has established a DBE Availability Advisory of 6.4%. It is therefore, ACCMA's expectation that available DBE firms have an opportunity to participate in this project.

Please refer to the Notice to Bidders/Proposers – Disadvantaged Business Enterprise Information attached to this RFP as Attachment 3 for further information on the DBE Availability Advisory, Caltrans' DBE Program Plan, and the requirements thereof.

SECTION 5: RFP SUBMITTAL REQUIREMENTS

Please prepare your proposal in accordance with the following requirements.

1. *Proposal:* The proposal (excluding resumes and the transmittal letter) shall not exceed a total of the equivalent of 25 single-sided, 8.5" x 11" pages. Resumes should be included in an appendix.
2. *Transmittal Letter:* The proposal shall be transmitted with a cover letter describing the firm's/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and that staff proposed are available to begin work on this contract upon approval by the ACCMA Board. The person authorized by the firm/team to negotiate a contract with ACCMA shall sign the cover letter and the letter should include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the consultant selection process.

Address the cover letter as follows:

Jean Hart, Deputy Director
Alameda County Congestion Management Agency
1333 Broadway, Suite 220
Oakland, California 94612

3. *Project Understanding:* This section should clearly convey the consultant's understanding of the nature of the work and the general approach to be taken.
4. *Work Plan and Schedule.* This section should include a description of how each task of the project will be conducted, identification of deliverables, and a schedule. The Work Plan should have sufficient detail to demonstrate a clear understanding of the project. The schedule should show the expected sequence of tasks and important milestones.
5. *Management Approach and Staffing Plan.* This section should describe the consultant's

approach to management of the work. If the proposal is a team effort, the distribution of work among the team members should be indicated. This section should discuss the consultant's organization for this project, how the work assignments are structured, and the staffing. A chart showing the amount of time each key team member is devoting to the project should be included. The consultant shall describe the role of any subcontractors, with a description of the subcontractors' specific responsibilities. Discuss the firm/team's approach for completing the services for this project within budget.

The proposal should include a staffing plan (by quarter) and an estimate of the **total hours** (detailed by position). The staffing plan should also identify the hours required to complete each of the tasks listed in Section 2 above and the total hours for the overall project.

6. *Qualifications of the Firm.* This section should provide a description of previous projects, which clearly demonstrate the consultant's experience and qualifications to perform the public education and marketing for a toll facility. Experience working on other HOT Lanes or toll facilities is desirable. These descriptions should identify the role, if any, of key personnel assigned to conduct the project, and the outcome of the project. Provide a list of up to three former clients for whom consultant's firm and team members have performed services similar to those described in this RFP, along with names and telephone numbers of persons who may be contacted as references. If subcontractors are to be used, provide similar information for each subcontractor.

Key personnel are expected to be committed for the duration of the project. Replacement of key personnel will not be permitted without prior consultation with and approval of the ACCMA.

7. *Submittal of Proposals:* Six (6) copies of your proposal are due at the ACCMA offices no later than the time and date specified in Section 7 below. Envelopes or packages containing the proposals should be clearly marked, **"Proposals Enclosed."**
8. *Cost Proposal:* A cost proposal should be submitted in a **separate sealed envelope titled "Smart Carpool Lane Cost Proposal."** The cost submittal should indicate the number of anticipated hours by the Project Manager and key personnel. The estimated level of hours for other staff can be summarized in general categories.

SECTION 6: SELECTION OF CONSULTANT

The overall process will evaluate the technical components of all the proposals completely and independently from the cost component. The proposals will be evaluated and scored on a 100 point total basis using the following criteria:

1. Qualifications and specific experience of Key Personnel.
2. Project understanding and approach, including an understanding of the ACCMA and coordination processes.
3. Experience providing project controls
4. Knowledge of and experience with systems engineering.
5. Satisfaction of previous clients.
6. Schedule and capacity to provide qualified personnel.

Interviews will be held on the date specified in Section 7 below. The Project Manager and Key Personnel should attend the interview. The evaluation / interview panel may include representatives from ACCMA, Caltrans, ACTIA and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. Costs for travel expenses and proposal preparation shall be borne by the consultants.

Once the top firm/team has been determined, ACCMA staff will start contract negotiations with firm/team. If contract negotiations are not successful, the second ranked firm/team may be asked to negotiate a contract with ACCMA, etc. Provided the negotiations are proceeding well, the ACCMA may elect to initiate a portion of the work scope with a Notice to Proceed (NTP), prior to execution of the contract.

SECTION 7: SELECTION PROCESS DATES

August 10, 2006	A Pre-proposal Meeting will be held at 10:00 a.m. at the ACCMA offices
August 14, 2006	All questions pertaining to this RFP should be emailed to Jean Hart no later than August 14, 2006 at the following email address: jhart@accma.ca.gov
August 28, 2006	Proposals are due no later than 3:00 p.m. on August 28, 2006 at the offices of the Alameda County Congestion Management Agency, 1333 Broadway, Suite 220, Oakland, CA 94612. <i>Late submittals will not be accepted.</i>
Week of September 11, 2006	Interviews for consultant selection will be held the week of September 11, 2006

All questions pertaining to this RFP should be emailed to Jean Hart, Deputy Director, Planning, at the following email address: jhart@accma.ca.gov. All such emails must include the subject line "ACCMA RFP A06-020 Question:" and then the stated question in the body of the email. ACCMA will be unable to provide individual responses, and ACCMA will not respond to questions posed by any means other than email. Responses to all questions submitted by the above deadline that may have a material impact on the proposal will be provided to all attendees of the pre-proposal meeting discussed above, and will also be posted on the ACCMA website: www.accma.ca.gov.

SECTION 8: GENERAL CONDITIONS

A. Limitations

This RFP does not commit the Alameda County CMA to award a contract or to pay any costs incurred in the preparation of a proposal in response to this RFP.

B. Rejection of Proposals

The Alameda County CMA reserves the right to reject any or all proposals.

C. Award

All finalists may be required to participate in negotiations and to submit such price; technical or other revisions of their proposals as may result from negotiations. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and technical viewpoint.

D. Workscope Modifications

The ACCMA reserves the right to request changes to the staffing and/or scope of services contained in any of the proposals and to enter negotiations with any of the proposers regarding their submittal.

E. Contract

A sample contract is shown in Attachment 2. It is expected that the terms of the contract will be acceptable to the consultant.

F. Non - Discrimination

Contractors shall not discriminate on the basis of race, color, national origin, sex, or physical disability in the performance of CMA contracts

G. Levine Act

Selected consultants will be required to disclose on the record any contribution of more than \$250.00 which they have made to a CMA Board member within the twelve-month period preceding the submittal deadline of this RFP. This applies to your company, any member of your team, any agents for you or other team members and to the major shareholders of any closed corporation, which is part of your team. If you have made a contribution which needs to be

disclosed you must provide written notice of the date, amount and receipt of the contribution(s) to the CMA Executive Director, Dennis Fay. This information will need to be provided before the CMA can approve any contract

SECTION 9: LISTS OF FIRMS THAT RECEIVED THIS RFP

See Attachment 2 for the list of firms that received this RFP.

Attachments:

- Attachment 1 – ACCMA Sample Contract
- Attachment 2 – List of firms that received notification of this RFP
- Attachment 3 – Notice to Bidders – Disadvantaged Business Enterprise Information

Attachment 1 – ACCMA Sample Contract

***Note** – This introductory paragraph and each instance of bracketed text [like this] throughout this document should be reviewed prior to distribution to CMA Counsel and/or the Consultant. Each bracket represents a location where a choice needs to be made. (i) Irrelevant text and surrounding brackets should be deleted; (ii) placeholder text and surrounding brackets should be replaced with real language, and (iii) brackets surrounding relevant material should be deleted without affecting the text. Note also that this Agreement now contains provisions regarding DBEs that need to be deleted, depending on whether this is a federally-funded project, and whether a specific AAP is established for this contract.*

**Summary of
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and**

Contract No: CMA #A06-_____

Services to be Performed: Pursuant to **Article I, Section A, paragraph 1**, and as further described in **Appendix A**, services provided under this AGREEMENT consist of _____.

Compensation: Pursuant to **Article III, Section 1, paragraph 4**, and as further detailed in **Appendix D**, aggregate compensation under the AGREEMENT shall not exceed \$_____. As described in **Appendix D**, compensation shall be based on hours worked during the preceding month at the hourly rates shown on **Appendix C**.

Term: Pursuant to **Article I, Section A, paragraph 3**, from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work. Pursuant to **Article I, Section A, paragraph 22**, the services described in the Scope of Work shall be completed on or before _____.

CONSULTANT's Authorized Representative: _____

ACCMA's Project Representative: _____

AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

This AGREEMENT is made and entered into as of the latest date appearing on the signature page below, by and between the ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY, a joint powers agency ("CMA"), and _____, [a _____ (state) _____ corporation/ [a _____ (state) _____ partnership] [a _____ (state) _____ limited liability company] [a sole proprietorship], with a place of business at _____, _____ (City) _____, CA ("CONSULTANT").

RECITALS

WHEREAS, CMA has defined and developed the _____ [describe
_____ project] ("PROJECT");

WHEREAS, CMA desires to secure [professional services / describe] necessary for said PROJECT; and

WHEREAS, CONSULTANT represents that it possesses the professional qualifications and expertise to provide such services;

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

CMA hereby contracts with CONSULTANT and CONSULTANT hereby accepts such contract to perform the services upon the terms and subject to the conditions and in consideration of the payments set forth in this AGREEMENT. CONSULTANT promises, covenants and agrees to diligently pursue the work to completion in accordance with the schedule and under the terms and conditions set forth herein.

ARTICLE I

A. GENERAL.

1. **The PROJECT.** The PROJECT which is the subject of this AGREEMENT is more particularly described in **Appendix A**, "Detailed Scope of Work," attached hereto and by this reference incorporated herein.

2. **Scope of Services.** Except as may be specified elsewhere in the AGREEMENT, CONSULTANT shall furnish all technical and professional services including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the work in **Appendix A**, as further defined in **Appendix D**, "Project Cost Proposal," attached hereto and by this reference incorporated herein.

3. **Term.** The term of the AGREEMENT shall be from the date of Notice to Proceed with the services until the completion of the PROJECT pursuant to the Schedule of Work, to the satisfaction of CMA as evidenced by the Notice of Final Acceptance unless terminated earlier pursuant to **Article I, Section B**, below.

4. Compensation.

a. Compensation by CMA to CONSULTANT will be on the cost basis set forth in **Appendix D**.

b. Total compensation for services to be performed under this AGREEMENT will not exceed \$ _____, including Direct Expenses but excluding taxes, and CONSULTANT shall not be obligated to perform additional services beyond the scope of this AGREEMENT or incur costs which would cause this amount to be exceeded, unless and until the AGREEMENT has been formally amended in writing.

c. The aggregate amount was computed based on **Appendices A and D**.

5. **CMA's Representative.** CMA hereby designates its Executive Director to be its representative in administering all matters relative to the AGREEMENT. CMA's Representative may delegate authority for specific matters to other staff members or other consultants.

6. **CONSULTANT's Representative.** CONSULTANT hereby designates _____ to represent CONSULTANT with full authority under the AGREEMENT.

7. **CONSULTANT's Identity and Personnel.** _____ will be the key person for the performance of services under this AGREEMENT.

CONSULTANT is the prime consultant heading a team that includes multiple subconsultant firms. The identity of the firms, their respective areas of responsibility and the key personnel who will work on the PROJECT are identified on **Appendix B**, "Key Project Personnel," attached hereto and by this reference incorporated herein. Any significant change in responsibilities among such firms, any addition or deletion of a firm (whether working as a joint venture partner or subconsultant), and any change in key personnel may be made only upon prior written approval by CMA.

CONSULTANT and its subconsultants shall notify CMA of any proposed change of ownership or fundamental structure, respectively, in CONSULTANT's firm or any subconsultants' firm. Within 30 days of such notice, CMA shall notify CONSULTANT whether CMA will approve such changed firm to continue providing services under this AGREEMENT or whether CMA will terminate this AGREEMENT or require a substitution of a subconsultant firm. Nothing in this provision shall be construed to limit CMA's right to terminate this AGREEMENT for cause or without cause as set forth in **Article I, Section B** of this AGREEMENT.

Subcontracts between CONSULTANT and other team member firms and between team member firms and other lower tier subconsultants will be subject to review and approval of CMA's representative.

8. **Preliminary Review of Work.** Where CONSULTANT is required to prepare and submit reports, working papers, etc. to CMA as products of the work described in the Scope of Work, these shall be submitted in draft form, and CMA shall have the opportunity to direct revisions prior to formal submission by CONSULTANT.

9. **Appearance at Hearings.** If and when required by CMA, CONSULTANT shall render assistance at public meetings and hearings to perform its services under the AGREEMENT as may be deemed necessary by CMA.

10. **Responsibility of CONSULTANT.** CONSULTANT shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under the AGREEMENT. Neither CMA's review, acceptance, nor payment for any of the services

required under the AGREEMENT shall be construed to operate as a waiver of any rights under the AGREEMENT or of any cause of action arising out of the performance of the AGREEMENT, and CONSULTANT shall be and remain liable to CMA in accordance with applicable law for all damages to CMA caused by CONSULTANT's negligent performance of any of the services furnished under the AGREEMENT.

11. Inspection of Work. It is understood that authorized representatives of CMA may inspect or review CONSULTANT's work in progress at any reasonable time.

12. Suspension, Delay or Interruption of Work. CMA may suspend, delay, or interrupt the services of CONSULTANT for the convenience of CMA. In the event of such suspension, delay, or interruption by CMA or of Excusable Delays as defined in **Article II, Section C**, equitable adjustment will be made in the PROJECT schedule, commitment and cost of CONSULTANT's personnel and subconsultants, and CONSULTANT's compensation.

13. No Third Party Beneficiaries. This AGREEMENT gives no rights or benefits to anyone other than CMA and CONSULTANT and has no third-party beneficiaries.

14. Legal Action. All legal actions by either party against the other arising from this AGREEMENT, or for the failure to perform in accordance with the applicable standard of care, or any other cause of action, will be subject to the statutes of limitation of the State of California.

15. Survival of Indemnities. Notwithstanding the termination of this AGREEMENT and/or the breach of contract or warranty, fault, tort (including but not limited to torts based on negligence, statute or strict liability), CONSULTANT's obligations of indemnity set forth in **Article I, Section F** and any releases, limitations on indemnity, and any and all limitations on any remedies herein shall survive termination of this AGREEMENT for any cause, and **Article I, Section A, paragraph 10** and **Article I, Section F** of this AGREEMENT shall take precedence over any conflicting provision of this AGREEMENT or any document incorporated into it or referenced by it.

16. Jurisdiction. The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims related to it.

17. Severability and Survival. If any of the provisions contained in this AGREEMENT are held for any reason to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability will not affect any other provision, and this AGREEMENT will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18. Arbitration. All claims, counterclaims, disputes, and other matters in question arising out of, or relating to, this AGREEMENT or the breach thereof shall be resolved by final, binding arbitration, conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the date of execution of this AGREEMENT, except that the parties may mutually agree to a different alternative dispute resolution mechanism by jointly executing an agreement in writing describing such alternative mechanism. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. If either party refuses or fails to participate in naming an arbitrator or in the arbitration itself, the arbitrator named by the American Arbitration Association or the other party is hereby authorized to decide the dispute based upon the information presented to him/her. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding hereunder. In any arbitration proceeding hereunder, any arbitrator shall have substantial training and professional experience in the subject matter of the arbitration, but shall not have been employed by a party for at least five (5) years prior to the arbitration proceeding. No person shall be chosen as an arbitrator who has at any time been an employee or consultant of either party. All arbitration hearings shall be held at a mutually agreeable time and location within the City of Oakland, California, unless otherwise agreed by the parties. The decision of the arbitrator shall be final, conclusive and binding on the parties, absent fraud or gross error. The decision of the arbitrator may be entered as a judgment in a court of competent jurisdiction. The parties shall each be responsible for one-half of the arbitrator's fees and expenses. Any attorney-client privilege and other protections against disclosure of confidential information, including any protection afforded by the work product privilege for attorneys that could otherwise be claimed by a party shall be available to and may be claimed by such party in any arbitration proceeding hereunder. Neither party waives any attorney-client privilege or any other privilege against disclosure of confidential information by reason of anything contained in or done pursuant to or in connection with this **paragraph 18**. All arbitration proceedings hereunder may be reported by a certified shorthand court reporter.

19. Attorneys' Fees. Should it become necessary to enforce the terms of this AGREEMENT, the prevailing party as determined by a court or an arbitrator shall be entitled to recover reasonable expenses and attorneys' fees from the other party.

20. Final Acceptance. When CMA determines in its reasonable discretion that CONSULTANT has satisfactorily completed the Scope of Services, CMA shall give CONSULTANT written Notice of Final Acceptance, and CONSULTANT shall not incur any further costs hereunder. CONSULTANT may request this determination when, in its opinion, it has satisfactorily completed the Scope of Services, and if so requested, CMA shall make this determination within three weeks of such request.

21. Subcontracts. Subcontracts between CONSULTANT and other team firms and between team members firm and other lower tier subconsultants will be subject to review and approval of CMA's representative. Any such subcontracts in excess of \$25,000.00 shall contain all provisions stipulated in this AGREEMENT as applicable to subconsultants.

22. Completion of Services. The services described in the Scope of Work shall be completed on or before _____, unless such date is extended by mutual agreement of the parties. *[Insert date for termination of agreement]*

B. TERMINATION/CANCELLATION.

1. For Convenience. CMA may terminate this AGREEMENT. If CMA terminates the AGREEMENT for the convenience of CMA, CMA shall give CONSULTANT seven (7) days prior written notice. CONSULTANT shall be paid for services performed to the date of termination, to include a pro-rated amount of profits, if applicable, but no amount shall be allowed for anticipated profit on unperformed services. In addition to payment for services performed, CMA shall pay CONSULTANT the allowable costs incurred prior to termination, and other costs reasonably incurred by CONSULTANT to implement the termination, such as, but not limited to, subcontract termination costs and related closeout costs, if any.

2. For Cause. If CONSULTANT fails to fulfill its obligations under this AGREEMENT and CMA decides to terminate this AGREEMENT accordingly, CMA shall give CONSULTANT seven (7) days prior written notice of its intent to terminate the AGREEMENT for cause. If, at the end of the seven (7) day notice, CONSULTANT has not commenced correction of its performance, CMA may immediately thereafter exercise its right of termination.

3. **Damages/Compensation.** If the termination is due to the failure of CONSULTANT to fulfill its obligations under the AGREEMENT, CONSULTANT will be compensated for that portion of the work which has been completed and accepted by CMA, and for services performed to the date of termination, including a prorated amount of profit, if applicable, but no allowance for anticipated profit on unperformed services. In such case, CMA may take over the work and prosecute the same to completion by contract or otherwise, and CONSULTANT shall be liable to CMA for reasonable costs incurred by CMA in making necessary arrangements for completion of the work by others.

4. **Adjustments.** If, after notice of termination for failure to perform, it is determined by CMA that CONSULTANT had not so failed and CMA nonetheless desires to terminate the AGREEMENT, the termination shall be deemed to have been effected for the convenience of CMA. In such event, adjustment shall be made as provided in **Article I, Section B, paragraph 1.**

5. **Rights and Remedies.** The rights and remedies of the parties provided in this Section are cumulative and not exclusive, and are in addition to any and all other rights and remedies provided by law or other sections of this AGREEMENT.

6. **Waivers.** CONSULTANT, by executing the AGREEMENT, shall be deemed to have waived any and all claims for damages in the event of CMA's termination for convenience as provided in **Article I, Section B, paragraph 1**, except for justifiable costs of termination, including, but not limited to, subcontract termination costs as mutually agreed by CMA and CONSULTANT.

C. REVISIONS IN SCOPE OF SERVICES.

1. **Change Order.** CMA's representative may make changes in or additions to the Scope of Services under the AGREEMENT if such changes are agreed to by CONSULTANT, which agreement shall not be unreasonably withheld, through a written Change Order which does not modify the overall purpose, term or compensation provisions of the AGREEMENT. No changes in the Scope of Work shall cause an increase in cost to CMA unless the change is approved in advance by a written Change Order.

2. **Extra Work.** At any time during the term of the AGREEMENT, CMA may order extra work to be performed by CONSULTANT. Extra work is defined as work which was not

anticipated and/or contained in the AGREEMENT and which is determined by CMA to be necessary for the PROJECT. Necessary changes in the description of the Scope of Services, equitable adjustments in allowable costs, fixed fee, maximum price, term and schedule required by the Extra Work Order shall be agreed upon by the parties and incorporated herein through the execution of a written amendment to this AGREEMENT. CONSULTANT shall not perform any work or incur any costs pursuant to any Extra Work Order without prior approval by CMA. CONSULTANT's compensation shall be adjusted due to an Extra Work Order only if it has an impact on costs or terms of the AGREEMENT.

D. OWNERSHIP OF MATERIALS/CONFIDENTIALITY.

1. Documents. Except as noted below, deliverables prepared by CONSULTANT under the AGREEMENT, such as plans, drawings, tracings, quantities, specifications, proposals, sketches, diagrams and calculations, relative to the AGREEMENT shall become the property of CMA upon completion of the term of this AGREEMENT whether or not the PROJECT is completed. CMA shall not be limited in any way in its use thereof at any time during or after the term of this AGREEMENT, provided that any such use not within the purposes of the AGREEMENT shall be at the sole risk of CMA, and provided that CMA shall indemnify CONSULTANT against any damages resulting from such use, including the release of this material to third parties for use not intended in the AGREEMENT, and for deliverables that have been changed without CONSULTANT's written approval. All documents shall be provided in both written and electronic format.

2. Confidentiality. All ideas, memoranda, specifications, plans, manufacturing procedures, drawings, descriptions, and all other written information submitted to CONSULTANT by or on behalf of CMA in connection with the performance of the AGREEMENT shall be held confidential by CONSULTANT and shall not, without the prior written consent of CMA, be used for any purposes other than the performance of the services under this AGREEMENT. Nothing furnished to CONSULTANT which is otherwise known to CONSULTANT or becomes generally known to the related industry, shall be deemed confidential. CONSULTANT shall not use CMA's name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other news medium without the express written consent of CMA. CONSULTANT may use project technical information at will in the demonstration of

expertise for purposes of describing project experience to others in the routine conduct of CONSULTANT's business with CMA's prior written consent.

E. CONSULTANT STATUS/SUBCONSULTANTS.

1. **Consultant.** In the performance of the services to be provided hereunder, CONSULTANT is an independent consultant and is not an employee, agent or other representative of CMA.

2. **Assignment or Transfer.** Services to be furnished hereunder shall be deemed to be professional services and, except as herein provided, CONSULTANT has neither the right nor the power to assign, sublet, transfer or otherwise substitute its interest in the AGREEMENT or its obligations hereunder without the prior written consent of CMA.

F. INDEMNIFICATION.

1. **Duties.** CONSULTANT represents and maintains that it is skilled in the technical practices necessary to perform the services, its duties and obligations, expressed and implied, contained herein, and CMA expressly relies upon CONSULTANT's representations regarding its skills and knowledge. CONSULTANT shall perform all services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

2. **Responsibilities.** CONSULTANT agrees to defend, protect, indemnify and hold harmless CMA, its officers and employees, from and against any and all liability, claims, suits, loss, damages, costs and expenses (collectively "Claims") to the extent arising out of or resulting from any negligent acts, errors or omissions of CONSULTANT, and its officers, employees, agents or subconsultants in the performance of their services under the AGREEMENT. In the event CMA is found by a court or arbitrator to be partially liable for a Claim, CMA shall reimburse CONSULTANT for its proportionate share of the reasonable costs of defense actually expended, based on its share of liability.

CMA shall provide CONSULTANT an opportunity to cure, at CONSULTANT's expense, all errors and omissions, which may be disclosed during the review of the services performed by CONSULTANT. Should CONSULTANT fail to make such corrections in a timely manner, such corrections shall be made by CMA and CONSULTANT shall pay all costs thereof.

It shall be the responsibility of CONSULTANT to provide the basic insurance requirements indicated in **Section G**, below.

G. INSURANCE.

1. Comprehensive Liability. CONSULTANT shall carry Commercial or Comprehensive General Liability Insurance and maintain aggregate limits of liability sufficient cover not less than \$1,000,000.00 per occurrence for bodily injury and \$500,000.00 per occurrence for Property Damage and Automobile Liability Insurance with limits not less than \$250,000.00 per person and \$500,000.00 per occurrence for property damage. Maintenance of said insurance shall extend throughout the entire term of this AGREEMENT. Such insurance shall add CMA, its officers, employees, agents, and, if applicable other permitting agencies as identified by CMA, while acting within the scope of this AGREEMENT, as additional insureds. Such insurance shall include the following:

- a. All operations including use of all vehicles.
- b. Blanket contractual liability on all written contracts, including this AGREEMENT.
- c. Personal injury (in lieu of, or in addition to, bodily injury).
- d. Use of watercraft, where applicable.

Subconsultants of CONSULTANT shall provide evidence of their own Commercial or Comprehensive General Liability Insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts, is unable to meet the insurance specifications provided in this **Section G, paragraph 1**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to waive or modify any of the insurance specification requirements for such subconsultant.

2. Errors and Omissions. In addition to the requirements of **Article I, Section G, paragraph 1** above, CONSULTANT shall carry professional liability insurance for errors and omissions in an amount not less than \$1,000,000. Such insurance shall include the following:

a. A deductible or self-insured retention is permissible on this policy, providing that such deductible or self-insured retention shall not exceed \$50,000 per occurrence.

b. Said policy shall include a contractual liability endorsement on all written contracts, including this AGREEMENT.

c. Subconsultants of CONSULTANT providing services of a professional nature, shall provide evidence of their own professional liability insurance which meets the above specifications to CMA, or be added to CONSULTANT's policy as additional insured if said policy of CONSULTANT allows such addition.

Notwithstanding the above, in the event a subconsultant, after using its best efforts is unable to meet the professional liability insurance requirements provided in this **Section G, paragraph 2**, CMA, after examining the subconsultant's circumstances, may decide, in its sole discretion, to modify the professional liability requirements for such subconsultant.

3. Worker's Compensation. CONSULTANT shall carry Worker's Compensation Insurance as required by California Law, covering all work performed by CONSULTANT under the AGREEMENT, and all of CONSULTANT's personnel performing services under the AGREEMENT.

4. Certificates. Insurance certificates evidencing the policies described in this **Article I, Section G** are to be furnished to CMA and provide for not less than sixty (60) days prior written notice to CMA of any cancellation.

H. PROHIBITED INTEREST.

1. Solicitation. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure the AGREEMENT and that it has not paid or agreed to pay any company or person, other than a bonafide employee working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making the AGREEMENT. For breach of violation of this warranty, CMA shall have the right to rescind the AGREEMENT without liability.

2. Conflict of Interest. CONSULTANT agrees that, for the term of this AGREEMENT, no member, officer or employee of CMA, during his/her tenure or for one (1) year thereafter, or

member or delegate to the Congress of the United States, shall have any direct interest in the AGREEMENT or any direct or material benefit arising therefrom.

3. Conflict of Employment. Employment by CONSULTANT of any current officer, executive director or other employee of CMA shall not be permitted even though such employment may be outside of the employee's regular working hours or on weekends, holidays or vacation time. Further, for a period of one year after leaving office or employment, no officer, executive director or other employee of CMA shall, for compensation, act as agent or attorney or otherwise represent CONSULTANT by making any formal or informal appearance by making any oral or written communication before CMA, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding or revocation of a permit, license, grant, entitlement or contract, or the sale or purchase of goods, services or property.

I. AFFIRMATIVE ACTION, SMALL BUSINESS ENTERPRISE POLICY AND LOCAL BUSINESS ENTERPRISE POLICY[, AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM]. *[Delete the bracketed portion of this section title if this is not a federally-funded contract.]*

1. Affirmative Action. In connection with the execution of the AGREEMENT, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. CONSULTANT shall take affirmative action to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

2. SBE Policy. Pursuant to CMA's Small Business Enterprise (SBE) Policy, CONSULTANT is encouraged to utilize qualified SBE subconsultants to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on SBE usage during the term of this AGREEMENT using the SBE Participation Report Form included in **Appendix E**, "SBE And LBE Participation Report Forms," attached hereto and by this reference incorporated herein. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the

term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

3. LBE Policy. Pursuant to CMA's Local Business Enterprise (LBE) Policy, CONSULTANT is encouraged to utilize qualified LBE subconsultants to perform a portion of the work described in **Appendix A**, and CONSULTANT shall report on LBE usage during the term of this AGREEMENT using the LBE Participation Report Form included in **Appendix E**. CONSULTANT shall submit such a report promptly upon the completion of the PROJECT. If the term of this AGREEMENT is greater than one year, CONSULTANT shall also submit such reports annually on each anniversary of the date of this AGREEMENT.

4. *[Delete items 4a-4f, i.e., up to Section J, if this is not a federally-funded contract.]* Caltrans Standard Agreement For Subconsultant/DBE Participation.

a. Disadvantaged Business Enterprise (DBE) Participation *[Use either 4a or 4b, depending on whether there is a contract-specific AADPL; use 4a if no AADPL.]*

i. The CMA has not established a DBE Availability Advisory Percentage for this Agreement. This AGREEMENT is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" ("49 CFR 26"). Bidders who obtain DBE participation on this contract will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

ii. DBEs and other small businesses, as defined in 49 CFR 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT and its subconsultants, if any, shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as CMA deems appropriate.

iii. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Paragraph 4.a.**

b. Disadvantaged Business Enterprise (DBE) Program Availability Advisory Percentage *[Use either 4a or 4b, depending on whether there is a contract-specific DBE AAP; use 4b if DBE AAP established.]*

i. This AGREEMENT is subject to Title 49, Part 26, Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" ("49 CFR 26"). In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the CMA encourages the participation of Disadvantaged Business Enterprises ("DBEs"), as defined in 49 CFR 26 in the performance of agreements financed in whole or in part with federal funds. The CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

ii. As required by federal law, Caltrans has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, the Caltrans is tracking DBE participation on all federal-aid contracts.

iii. To assist consultants in ascertaining DBE availability for specific items of work, the CMA advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project and the likely DBE Availability Advisory Percentage is ____ percent. *[Insert the DBE AAP determined for the project.]* The CMA also advises that participation of DBEs in the specified percentage is not a condition of award.

iv. CONSULTANT has agreed to carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted agreements. The regulations in their entirety are incorporated herein and by reference.

v. The CONSULTANT should notify CMA in writing of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

vi. DBEs and other small businesses, as defined in 49 CFR 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. CONSULTANT and its subconsultants, if any, shall not discriminate on the basis of

race, color, national origin, or sex in the performance of this AGREEMENT. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the recipient deems appropriate.

vii. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Paragraph 4a.**

**c. Performance of DBE Consultants and other DBE Subconsultants/
Suppliers**

i. A DBE performs a commercially useful function when it is responsible for execution of the work of the AGREEMENT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the AGREEMENT, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the AGREEMENT is commensurate with the work it is actually performing, and other relevant factors.

ii. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the CMA shall examine similar transactions, particularly those in which DBEs do not participate.

iii. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the AGREEMENT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a commercially useful function.

d. Prompt Payment of Funds Withheld to Subconsultants.

i. The CMA shall hold retainage from the CONSULTANT and shall make prompt and regular incremental acceptances of portions, as determined by CMA, of the contract work, and pay retainage to the CONSULTANT based on these acceptances. The CONSULTANT or its subconsultants shall return all monies withheld in retention from a subconsultant or sub-subconsultant within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Federal law (49CFR26.29) requires that any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating CONSULTANT or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by the CONSULTANT, deficient subcontract performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE consultants and subconsultants.

ii. Any subcontract entered into as a result of this AGREEMENT shall contain all of the provisions of this **Paragraph 4.c.**

e. DBE Records

i. The CONSULTANT shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. If CONSULTANT is a certified DBE, CONSULTANT shall also show the date of work performed by CONSULTANT's forces along with the corresponding dollar value of the work.

ii. Upon completion of the AGREEMENT, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F (Exhibit 17-F in Chapter 17 of the Caltrans LAP), certified correct by the CONSULTANT or the CONSULTANT's authorized representative, and shall be furnished to CMA with the final invoice. Failure to provide the summary of DBE payments

with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the CONSULTANT when a satisfactory "Final Report Utilization of Disadvantaged Business Enterprises (DBE)" is submitted to CMA.

iii. Prior to the fifteenth of each month, the CONSULTANT shall submit documentation to CMA showing the amount paid to DBE trucking companies. The CONSULTANT shall also obtain and submit documentation to CMA showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the CONSULTANT may count only the fee or commission the DBE receives as a result of the lease arrangement.

iv. CONSULTANT shall also submit to CMA documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans Monthly DBE Trucking Verification, CEM-2404(F) form provided to the CONSULTANT by CMA.

f. **DBE Certification and De-certification Status.** If a DBE subconsultant is decertified during the life of the AGREEMENT, the decertified subconsultant shall notify the CONSULTANT in writing with the date of de-certification. If a subconsultant becomes a certified DBE during the life of the AGREEMENT, the subconsultant shall notify the CONSULTANT in writing with the date of certification. Any changes should be reported to CMA within 30 days.
[Delete items 4a-4f above if this is not a federally-funded contract.]

J. NOTIFICATION.

All notices hereunder and communications regarding interpretation of the terms of the AGREEMENT or changes thereto shall be effected by the mailing thereof by registered or certified mail, postage prepaid and addressed as follows:

CONSULTANT:

CMA:

ATTN: (name)
(address)
(city), CA (zip)

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

ATTN: Dennis Fay
Executive Director
1333 Broadway, Suite 220
Oakland, CA 94612-1918

K. AUDIT OF BOOKS AND RECORDS.

CONSULTANT shall make available to CMA, its authorized agents (including but not limited to representatives of the state and federal governments), officers and employees, for examination, any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to CMA, and shall furnish to CMA, its agents, and employees, such other evidence or information as CMA may require with respect to any such expense or disbursement charged by CONSULTANT.

The records described in this Section shall be retained by CONSULTANT and made available for inspection by CMA for a period of three (3) years after this AGREEMENT is terminated, or the date of the final payment, whichever is later. The audit to determine final compensation will be accomplished by CMA within one year after completion of the PROJECT.

L. ENTIRE AGREEMENT.

This AGREEMENT constitutes the entire agreement between the parties hereto relating to the PROJECT and supersedes any previous agreement or understanding.

ARTICLE II - SCHEDULE

A. SCHEDULE OF WORK.

CONSULTANT shall conform with the schedule set forth in **Appendix C**, "Milestone Schedule," attached hereto and by this reference incorporated herein, except as otherwise modified by the AGREEMENT. In the event it becomes necessary to modify the Schedule of Work, CONSULTANT will prepare a revised schedule for review and approval by CMA. When a revised schedule has been submitted to and approved by CMA, it will be substituted for **Appendix C** and will become a part of this AGREEMENT. CONSULTANT is responsible for

reporting in a prompt and timely manner whenever it appears the established work schedule will not be met, whether or not the reasons for anticipated delay are within CONSULTANT's control.

B. REPORTING.

Monthly progress reports in a form acceptable to CMA, which describe work accomplished, shall be submitted with CONSULTANT's monthly billings. CMA agrees to respond to CONSULTANT's draft report submissions in accordance with the Schedule of Work.

C. DELAY.

Neither party hereto shall be considered in the default in the performance of its duties and obligations under this AGREEMENT with respect to the "Milestone Schedule", to the extent that the performance of any obligation is prevented or delayed by an Excusable Delay as defined herein. Should CONSULTANT's services be delayed by any mutually agreed upon excusable cause, CONSULTANT's schedule for completion of tasks affected by such delay shall be extended as agreed to by CMA. CONSULTANT shall take all reasonable actions to minimize any schedule extensions or additional costs to CMA resulting from such delay. Excusable Delays may include, but are not limited to, acts of God or of the public enemy, acts or failures to act of other agencies or CMA (in either their sovereign or contractual capacity), embargoes, and unusually severe weather. In every case, the failure to perform must be reasonably beyond the control and without the fault or negligence of CONSULTANT.

D. NOTICE OF POTENTIAL DELAY.

As a condition precedent to the approval of an extension of time to complete the established work schedule, CONSULTANT shall give written notice to CMA within seven (7) working days after CONSULTANT knows or should know of any cause or condition which might, under reasonably foreseeable circumstances, result in delay for which CONSULTANT may claim an extension of time.

ARTICLE III – COMPENSATION/PAYMENT

A. INVOICES AND TIME OF PAYMENT.

1. For all services described in **Article I** and **Appendix A**, payment is due within thirty (30) days after receipt of billing of the amount due for all services rendered during the

month, except as otherwise provided in this **Section A**. Payment for service will represent the value of the completed scope of work as measured by expended costs to date.

2. CMA shall withhold ten percent (10%) of each progress payment referred to in paragraph 1 above. *[Delete this paragraph if not applicable to this contract]*

3. If CMA disputes any portion of the amount due to CONSULTANT, it may, at its sole discretion, withhold payment up to 150% of the disputed amount pending resolution of the dispute. If any amount is wrongfully withheld or not paid to CONSULTANT on a timely basis, CMA shall pay to CONSULTANT 1.5% per month for the improperly withheld amount for each month which payment is wrongfully withheld or not paid. In any action for the collection of amount withheld in violation of this provision, the prevailing party shall be entitled to reasonable attorney's fees and costs.

4. CONSULTANT agrees that within twenty (20) days of receipt of payment from CMA, CONSULTANT shall pay to its subconsultants all amounts due from such payment, subject to such legal requirements under federal or state law regarding withholding of disputed payments and applicable penalties. *[If this is a federally funded contract, change twenty (20) to ten (10) above]*

5. The format of payment invoices shall be as mutually agreed upon by CONSULTANT and CMA.

6. CMA may, on occasion, request reasonable documentation for certain expense items. In such instances, payment for all other amounts in the invoice for which additional documentation is not required will be made.

7. Upon CMA's Final Acceptance pursuant to **Article I, Section A, paragraph 20**, CONSULTANT shall submit a final invoice to CMA and request final retention payment. CMA shall make final retention payment to CONSULTANT within 45 days of receipt of billing of the amount due. Final Payment shall be subject to the provisions of **paragraphs 1 and 3** above with regard to CMA's right to withhold disputed payments, CONSULTANT's rights to 1.5% payment on wrongfully withheld or untimely payment, any prevailing party's reasonable legal fees and costs and payments to subconsultants. *[Delete both instances of the word "retention" from this paragraph if the retention paragraph above has been deleted]*

8. CONSULTANT agrees that the cost principles set forth in Title 48 CFR, Chapter 1, Part 31 (Cost Principles and Procedures) shall be used to determine the allowability of individual cost items, except that travel and subsistence costs will be reimbursed in accordance with California Department of Personnel Administration guidelines for non-exempt State employees. Any costs for which payments have been made to CONSULTANT which are determined by subsequent audit to be unallowable under these cost principles and guidelines are subject to repayment by CONSULTANT to CMA.

9. CONSULTANT agrees to comply with federal procedures in accordance with Title 49 CFR, Part 18 (Uniform Administrative Requirements for Grants and Agreements with States and Local Governments).

10. If any subconsultant provides services pursuant to this AGREEMENT, the agreement with said subconsultant shall contain a clause to the effect that the provisions of paragraphs 8 and 9 above shall apply to said subconsultant.

B. SUSPENSION OF WORK.

In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, CONSULTANT may, after giving fifteen (15) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. Upon receipt of payment in full for services rendered, CONSULTANT will continue with all authorized services. Payment of all compensation due CONSULTANT pursuant to this AGREEMENT shall be a condition precedent to CMA's use of any of CONSULTANT's professional service work products furnished under this AGREEMENT.

ARTICLE IV - OBLIGATIONS OF CONSULTANT

A. AUTHORIZATION TO PROCEED.

CONSULTANT will not begin work on any of the services described in **Article I** until CMA directs it in writing to proceed.

ARTICLE V - OBLIGATIONS OF CMA

A. CMA-FURNISHED DATA.

CMA will provide to CONSULTANT all relevant technical data in CMA's possession, including, but not limited to, previous reports, maps, surveys, borings, and all other information

relating to CONSULTANT's services on the PROJECT. CONSULTANT will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by CMA.

B. ACCESS TO FACILITIES.

CMA will make its facilities reasonably accessible to CONSULTANT as required for CONSULTANT's performance of its service.

C. TIMELY REVIEW.

CMA will examine the studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as CMA deems appropriate; and render, in writing, decisions required of CMA in a timely manner.

D. PROMPT NOTICE.

CMA will give prompt written notice to CONSULTANT whenever CMA observes or becomes aware of any development that affects the scope or timing of CONSULTANT's services, or any defect in the work of CONSULTANT or its subconsultants.

ARTICLE VI - APPENDICES, SCHEDULES AND SIGNATURES

This AGREEMENT, including its Appendices, constitutes the entire agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties.

The following Appendices are hereby made a part of this AGREEMENT:

Appendix A: DETAILED SCOPE OF WORK

Appendix B: CONSULTANT AND SUBCONSULTANT FIRMS KEY PROJECT
PERSONNEL

Appendix C: MILESTONE SCHEDULE

Appendix D: PROJECT COST PROPOSAL

Appendix E: SBE AND LBE PARTICIPATION REPORT FORMS

IN WITNESS WHEREOF, CMA has by order caused the AGREEMENT to be subscribed by the binding authority of CMA and CONSULTANT has caused the AGREEMENT to be subscribed on its behalf by duly authorized signees.

CONSULTANT:

By: _____
Name: _____
Its: _____

Date: _____

CMA:

ALAMEDA COUNTY CONGESTION
MANAGEMENT AGENCY

By: _____
Dennis Fay, Executive Director

Date: _____

Recommended For Approval

By: _____
Name / Title

Approved as to form and legality:

Wendel, Rosen, Black & Dean LLP
Legal Counsel to CMA

APPENDIX A
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

DETAILED SCOPE OF WORK

APPENDIX B
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

CONSULTANT AND SUBCONSULTANT
FIRMS KEY PROJECT PERSONNEL

APPENDIX C
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

MILESTONE SCHEDULE

APPENDIX D
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

PROJECT COST PROPOSAL

APPENDIX E
to the
AGREEMENT
between the
ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
and

SBE AND LBE PARTICIPATION REPORT FORMS

**ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
SBE PARTICIPATION REPORT**

(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

Name, Address and Phone Number of Each SBE Firm Participating on this Project (Source of SBE Certification, if available)	SBE Project Participation (to date)		Nature of Participation
	Dollar Value	Percent	
1.			
2.			
3.			
4.			

**ALAMEDA COUNTY CONGESTION MANAGEMENT AGENCY
LBE PARTICIPATION REPORT**

(Submit Annually and upon Completion of Project)

Consultant _____

Name of Project _____

Contract Amount _____

Name, Address and Phone Number of Each LBE Firm Participating on this Project (Source of LBE Certification, if available)	LBE Project Participation (to date)		Nature of Participation
	Dollar Value	Percent	
1.			
2.			
3.			
4.			

Attachment 2 – List of firms that received notification of this RFP

Company	Address 1	City	State	Zip	Email
3j Construction Company	36136 Perkins St	Fremont	CA	94536-4756	
Abrams Associates	2815 Mitchell Dr Ste 100	Walnut Creek	CA	94598-1634	charlie@abramsassociates.com
Ackland International, Inc.	333 Hegenberger Rd Ste 511	Oakland	CA	94621-1462	acklandint@aol.com
Albert Y. Seto Corp.	1555 Yosemite Ave Ste 48	San Francisco	CA	94124-3272	Aseto@prodigy.net
Alpha Construction & Eng.	45665 Willow Pond Plz.	Sterling	VA		www.alphacorporation.com
Anil Verma Associates Inc.	444 S Flower St Ste 1688	Los Angeles	CA	90071-2955	anilverma@earthlink.net
Anse Consulting Structural Engineers	1624 Franklin St Ste 1200	Oakland	CA	94612-2824	anandnene@aol.com
Arup (Ove Arup and Partners California,	901 Market St Ste 260	San Francisco	CA	94103-1734	sarapaul@arup.com
Awad & Barjoud	22 Wawona St	San Francisco	CA	94127-1119	awadbarjoud@msn.com
Azari Engineering, Inc.	4807 Clayton Rd Ste 100	Concord	CA	94521	info@azari-eng.com
Berryman & Henigar	6150 Stoneridge Mall Rd Ste 370	Pleasanton	CA	94588-3241	
Beyaz & Patel, Inc.	800 S Broadway Ste 200	Walnut Creek	CA	94596-5227	general@beyazpatel.com
Biggs Cardosa Associates	1871 The Alameda Ste 200	San Jose	CA	95126-1752	
Bkf Engineers	4780 Chabot Dr Ste 104	Pleasanton	CA	94588-3323	dkurcina@bkf.com
Brg Engineering	3841 N Freeway Blvd Ste 175	Sacramento	CA	95834-1948	nsuan@cwo.com
BSK Associates	1181 Quarry Lane, Bldg. 300	Pleasanton	CA	94566	mvannatta@bskinc.com
Camacho Communications	517 8th St	Sacramento	CA	95814-1205	j_camacho@camcosolutions.net
Carl Chan	1417 Lake Chabot Rd	San Leandro	CA	94577-3922	
Carona Engineers, Inc.	560 14th St	Oakland	CA	94612-1454	debs@carona.com
Carter & Burgess, Inc.	300 Frank H Ogawa Plz Ste 10	Oakland	CA	94612-2042	jacob.mcmurtry@c-b.com
Catalino B. Cecilio, P.E., P.H.	2009 Carignan Way	San Jose	CA	95135-1248	cat@cecilio-consulting.com
Cgr Management Consultants	407 Scenic Ave	Piedmont	CA	94611-3420	
CH2M HILL	155 Grand Ave Ste 1000	Oakland	CA	94612-3779	Deborah.Dagang@ch2m.com
Chaudhary & Associates, Inc.	851 Napa Valley Corporate Wy Ste G	Napa	CA	94558-6251	arvin@chaudhary.com
Chow Engineering, Inc.	7770 Pardee Ln Ste 100	Oakland	CA	94621-1424	msmookler@choweng.com
Creegan + D'Angelo Civil & Structural En	6800 Koll Center Pkwy Ste 150	Pleasanton	CA	94566-7044	ghanselin@pl.cdengineers.com
Culver Group	6580 Regional Street, Suite 210	Dublin	CA	94568	rhissen@culvergroup.com
Design Engineers Group	2175 The Alameda Ste 100	San Jose	CA	95126-1152	
Dks Associates	1956 Webster St FL 300	Oakland	CA	94612-2939	jas@dksassociates.com
Dmj + Harris	1330 Broadway Ste 1001	Oakland	CA	94612-2509	david.mazzo@dmjmharris.com
Dowling Associates	180 Grand Ave Ste 250	Oakland	CA	94612-3762	reception@dowlinginc.com
E2 Consulting Engineers, Inc.	1900 Powell St Ste 250	Emeryville	CA	94608-1807	hersh.saluja@e2.com
Ear Management, Inc.	2175 Sampson Ave Ste 118	Corona	CA	92879-6014	
Edaw	753 Davis St	San Francisco	CA	94111-1405	

Eip Associates	353 Sacramento St Ste 1000	San Francisco	CA	94111	RJeung@EIPAssociates.com
Eisen Letunic	1516 McGee Ave	Berkeley	CA	94703-1043	niko@eisenletunic.com
Environmental Science Associates	225 Bush St Ste 1700	San Francisco	CA	94104-4248	mabell@esassoc.com
Epc Consultants, Inc.	655 Davis St	San Francisco	CA	94111-1903	
Fehr & Peers Associates, Inc.	100 Pringle Avenue, Suite 600	Walnut Creek	CA	94596	C.shields@fehrandpeers.com
Fugro West, Inc.	1000 Broadway Ste 200	Oakland	CA	94607-4039	bvahl@fugro.com
Geomatica Transportation Services, Inc.	6665 Amador Plaza Rd Ste 140	Dublin	CA	94568-2953	gtsinc3@sbcglobal.net
Geotecnia	1624 Armstrong CT	Concord	CA	94521-1848	luis@geotecnia.com
Ghirardelli Associates	1970 Broadway, Suite 920	Oakland	CA	94612	raewyn@ghirardelliassoc.com
Gray-Bowen and Company	1820 Bonanza St Ste 204	Walnut Creek	CA	94596-4376	terry@gray-bowen.com
Harold Logwood & Associates	3007 Kingsland Ave	Oakland	CA	94619-3326	theminds@pacbell.net
Harris & Associates	120 Mason Cir	Concord	CA	94520-1214	joseland@harris-assoc.com
Hexagon Transportation Consultants, Inc.	40 S Market St Ste 315	San Jose	CA	95113-2323	avdh@hextrans.com
Hmh Engineers	1570 Oakland Rd	San Jose	CA	95131-2430	lfrench@hnh-engineers.com
Hntb	1330 Broadway Ste 1630	Oakland	CA	94612-2515	
Holmes & Narver	PO Box 8097	San Francisco	CA	94128-8097	
Hqe Incorporated	1305 Franklin St Ste 410	Oakland	CA	94612-3223	ouren@hqeinc.net
Int'l Civil Eng. Consultants (Iceci)	1995 University Ave Ste 119	Berkeley	CA	94704-1072	cec@icec.com
J.P. Singh & Associates	23 Red Arrow CT	Richmond	CA	94803-2105	
Jacobs Civil	1340 Treat Blvd Ste 208	Walnut Creek	CA	94597-8850	ron.richardson@jacobs.com
Jmec Engineering, Inc.	2975 Treat Blvd Ste B2	Concord	CA	94518-3687	JMEC@mindspring.com
John T. Warren & Associates	1404 Franklin St FL 4	Oakland	CA	94612-3210	laquino@jtwarren.net
Katz, Okitsu & Associates	1000 Broadway Avenue	Oakland	CA	94607	aedwin@katzokitsu.com
Kimley-Horn & Associates	555 12th St Ste 1230	Oakland	CA	94607-4095	anush.nejad@kimley-horn.com
Kleinfelder, Inc.	7133 Koll Center Pkwy Ste 100	Pleasanton	CA	94566-3183	
Korve Engineering	155 Grand Ave Ste 400	Oakland	CA	94612-3764	abalatsos@korve.com
L.D. Strobel Co., Inc.	PO Box 228	Concord	CA	94522-0228	
Lewis Engineering					Lewiseng@msn.com
M. Lee Corporation	3075 Citrus Cir Ste 200	Walnut Creek	CA	94598-2667	mlee@mleecorp.com
Mark Thomas & Co. Inc.	6920 Koll Center Pkwy Ste 219	Pleasanton	CA	94566-3150	jsims@fr.mthomas.com
Mendoza & Associates	505 Beach St, Ste 205	San Francisco	CA	94133-1131	
Meyer, Mohaddes, Associates, Inc.	2101 Webster St Ste 725	Oakland	CA	94612-3014	yjm@iteris.com
Mge Engineering, Inc.	7415 Greenhaven Dr Ste 100	Sacramento	CA	95831-5166	Leagleton@mgeeng.com
Moffatt & Nichol	160 Franklin St Ste 300	Oakland	CA	94607-3725	sburns@moffattnichol.com
Moffatt & Nichol Engineers	160 Franklin St Ste 300	Oakland	CA	94607-3725	sburns@moffattnichol.com

Multech Engineering Consultants, Inc.	1650 Zanker Rd Ste 210	San Jose	CA	95112-1129	
Mundie & Associates	3452 Sacramento St	San Francisco	CA	94118-1914	
Municon Consultants	1300 22nd St Ste A	San Francisco	CA	94107-3434	Lois@MUNICON.net
Ninyo & Moore	1956 Webster Street, Suite 400	Oakland	CA	94546	chayame@ninyoandmoore.com
Nolte & Associates	201 N. Civic Drive, Ste 225	Walnut Creek	CA	94596-3880	john.nielsen@nolte.com
Oak Engineering	915 Ralston Ave Ste B	Belmont	CA	94002-2207	
Ocampo-Esta Corporation	1419 Tennessee St	Vallejo	CA	94590-4628	
Odell Robertson Consulting	326 Pala Ave	Piedmont	CA	94611-3743	
Opac Consulting Engineers, Inc.	315 Bay St FL 2	San Francisco	CA	94133-1994	kwong-cheng@opac.org
Paragon Inc.	405-14th Street Suite 161	Oakland	CA	94612	mababio@aol.com
Parsons	120 Howard St	San Francisco	CA	94105-1628	kai.chan@Parsons.com
Parsons Brinckerhoff Construction Serv	3260 Lone Tree Way Ste 104	Antioch	CA	94509-5558	blittel@pacbell.net
Parsons Brinkerhoff	303 2nd St Ste 700	San Francisco	CA	94107-6306	
Pb Farradyne	303 2nd St Ste 700	San Francisco	CA	94107-1327	
Pbsj	2025 Gateway Pl Ste 335	San Jose	CA	95110-1008	kgo@pbsj.com
Pbsj-Oakland	2101 Webster St Ste 1835	Oakland	CA	94612-3011	macosta@pbsj.com
Pegasus Engineering	726 23rd Ave	San Francisco	CA	94121-3710	
Rajappan-Meyer Consulting Engineers, Inc	1038 Leigh Avenue, suite 100	San Jose	CA	95126	keith@rmengineers.com
Robinson & Associates	4834 Mary Jane Way	San Jose	CA	95124-5214	
Smith Engineering & Management	5311 Lowry Rd	Union City	CA	94587-5575	
Sps Engineers	22 Battery St Ste 600	San Francisco	CA	94111-5520	spsingh@pacbell.net
Sps Engineers	436 14th St Ste 1029	Oakland	CA	94612-2724	spsingh@pacbell.net
Sverdrup Civil, Inc.	1340 Treat Blvd Ste 208	Walnut Creek	CA	94597-8850	Tyler.Sheldon@jacobs.com
Sverdrup Civil, Inc.	1340 Treat Blvd Ste 208	Walnut Creek	CA	94597-8850	Susan.Farrell@jacobs.com
Synchronex	1199 N 5th St	San Jose	CA	95112-4416	emartinez@synchronex-usa.com
T.Y. Lin International Ccs	1111 Broadway Ste 2150	Oakland	CA	94607-4083	mciapponi@tylin.com
Tectonics	1500 Park Ave	Emeryville	CA	94608-3522	sfo@tectonics-ae.com
The Crosby Group	726 Main St	Redwood City	CA	94063-1923	info@crosbygroup.com
The Duffey Company	414 Jackson St Ste 404	San Francisco	CA	94111-1618	
The Hoyt Company	660 J St Ste 444	Sacramento	CA	95814-2483	kieu@thehoystco.com
Thomas C. Jee & Associates, Inc.	582 Market St Ste 516	San Francisco	CA	94104-5306	tjaeng@aol.com
Thomson Transportation Engineering, Inc.	2969 Johnson Ave	Alameda	CA	94501-3007	
TJKM Transportation Consultants	5960 Inglewood Dr Ste 100	Pleasanton	CA	94588-8582	snicholson@tjkm.com
Towill Incorporated	5099 Commercial Cir Ste 100	Concord	CA	94520-1234	joel.garcia@towill.com
Towill, Inc.	5099 Commercial Circle	Concord	CA	94520	dawn.johnson@towill.com

Transdyn, Inc	5669 Gibraltar Dr	Pleasanton	CA	94588-8547	rboardman@transdyn.com
Transportation Analytics	2625 Alcatraz Ave. #210	Berkeley	CA	94705	transportationanalytics@gmail.com
Transsystems Corporation	180 Grand Ave Ste 400	Oakland	CA	94612-3715	kmwong@transsystems.com
TRS Consultants, Inc.	5000 Executive Parkway, Suite 430	San Ramon	CA	94583-4210	lgould@trsconsultants.com
Urs Corporation	1333 Broadway Ste 800	Oakland	CA	94612-1924	nick_smyth@urscorp.com
V & A Consulting Engineers	1999 Harrison St Ste 975	Oakland	CA	94612-3592	jlv@vaengr.com
Vali Cooper & Associates, Inc.	41 Washington Ave	Point Richmond	CA	94801-3944	stevef@valicooper.com
Vanir	980 9th St Ste 900	Sacramento	CA	95814-2725	mansour.aliabadi@vanir.com
W. Koo & Assoc., Structural Engineers	600 City Pkwy W Ste 310	Orange	CA	92868-2900	wkoo@wkoo.com
W. Koo & Associates	2025 Gateway Pl Ste 357	San Jose	CA	95110-1014	kgo@wkoo.com
Wallace Group	1330 Arnold Dr Ste 249	Martinez	CA	94553-6538	danielv@wallacegroup.us
Washington Group International	1330 Broadway Ste 802	Oakland	CA	94612-2507	etty.mercurio@wgint.com
Washington Infrastructure Services, Inc.	2633 Camino Ramon Ste 450	San Ramon	CA	94583-9149	
Willdan Associates	609 Gregory Ln Ste 200	Pleasant Hill	CA	94523-2772	
Wood Rodgers	580 2nd St Ste 200	Oakland	CA	94607-3545	jparis@woodrodgers.com

Attachment 3 – Notice to Bidders
Disadvantaged Business Enterprise Information



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

July 28, 2006

NOTICE TO BIDDERS/PROPOSERS

DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

Bidders/Proposers are advised that, as required by federal law, Caltrans has established a statewide overall DBE goal. Caltrans is required to report to FHWA on DBE participation for all Federal-aid contracts each year so that attainment efforts may be evaluated. To provide assistance in meeting the Caltrans statewide overall DBE goal, the Agency may include a DBE Availability Advisory percentage in this Agreement. Bidders/Proposers need not achieve the percentage stated in any DBE Availability Advisory, as a condition of award.

1. TERMS AS USED IN THIS DOCUMENT

- The term 'Disadvantaged Business Enterprise' or 'DBE' means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term 'bidder' also means 'proposer' or 'offerer'.
- The term 'Agreement' also means 'Contract'.
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term 'Small Business' or 'SB' is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49CFR26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Contractor should ensure that DBEs and other SBs, have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Bidders/Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.
- C. Meeting the DBE Availability Advisory percentage is not a condition for being

for award of the Agreement.

3. SUBMISSION OF DBE INFORMATION

A "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" form will be included in the Agreement documents to be executed by the successful bidder. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

It is the bidder's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13CFR121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies or as a trucking company.
- C. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function, pursuant to Section 26.55, 49 CFR, Part 26, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- E. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- F. A prime contractor who is a certified DBE is eligible to claim all of the work in the Agreement toward the Department's assessed percent of work availability for DBEs except that portion of the work to be performed by non-DBE subcontractors.

5. RESOURCES

- A. The California Unified Certification Program (CUCP) database includes the DBEs certified from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact

the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.

- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program web site at:
<http://www.dot.ca.gov/hq/bep/>.

- Click on the link in the left menu titled Find a Certified Firm
- Click on Query Form link, located in the first sentence
- Click on Certified DBE's (UCP) located on the first line in the center of the page
- Click on Click To Access DBE Query Form
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- "Start Search", "Requery", "Civil Rights Home", and "Caltrans Home" links are located at the bottom of the query form

- C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans' Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as

petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease-agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. WHEN REPORTING DBE PARTICIPATION, PARTICIPATION OF DBE TRUCKING COMPANIES MAY COUNT AS FOLLOWS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

1333 BROADWAY, SUITE 220 • OAKLAND, CA 94612 • PHONE: (510) 836-2560 • FAX: (510) 836-2185
E-MAIL: mail@accma.ca.gov • WEB SITE: accma.ca.gov

EXHIBIT 10-J

STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION

1. Subcontractors

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Agency and any subcontractors, and no subcontract shall relieve the Contractor of his/her responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the Agency for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the Agency's obligation to make payments to the Contractor.
- B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- C. Contractor shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the Contractor by the Agency.
- D. Any substitution of subcontractors must be approved in writing by the Agency's Contract Manager in advance of assigning work to a substitute subcontractor.

2. Disadvantaged Business Enterprise Program Availability Advisory

- A. This Agreement is subject to title 49, part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure Caltrans achieves its federally mandated statewide overall DBE goal, the Agency encourages the participation of Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26 in the performance of Agreements financed in whole or in part with Federal Funds. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. As required by federal law, the Department has established a statewide overall DBE goal. In order to ascertain whether that statewide overall DBE goal is being achieved, the Department is tracking DBE participation on all Federal-aid contracts.
- C. To assist Contractors in ascertaining DBE availability for specific items of work, the Agency advises that it has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project and the likely DBE availability

advisory percentage is 6.4 percent. The Agency also advises that participation of DBEs in the specified percentage is not a condition of award

- A. Contractor has agreed to carry out applicable requirements of 49 CFR, Part 26, of the Code of Federal Regulations, entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs," in the award and administration of federally assisted Agreements. The regulations in their entirety are incorporated herein and by reference.
- B. The Contractor should notify the Contract Manager, in writing, of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.
- C. DBE and other small businesses (SB), as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with Federal funds. The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of US DOT- assisted agreements. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

3. Performance of DBE Contractors, and other DBE Subcontractors/Suppliers

- A. A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performing, and other relevant factors.
- B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- C. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Agreement with its own work force, or the DBE subcontracts a greater portion of the work of the Agreement than would be expected on the basis of normal industry

practice for the type of work involved, presume that it is not performing a commercially useful function.

5. PROMPT PAYMENT OF FUNDS WITHHELD TO SUBCONTRACTORS

A. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage held by the prime contractors or subcontractors from progress payments due subcontractors shall be promptly paid in full to subcontractors within 30 days after the subcontractor's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the 30 days may take place only for good cause and with the agency's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE and no-DBE prime contractors and subcontractors.

B. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

6. DBE Records

- A. The Contractor shall maintain records of materials purchased and/or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime Contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- B. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report- Utilization of Disadvantaged Business Enterprises (DBE)," CEM-2402F, Exhibit 17-F in Chapter 17 of the LAPM, and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Contract Manager. The form shall be furnished to the Contract Manager with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to the Contractor when a satisfactory Final Report Utilization of Disadvantaged Business Enterprises (DBE) are submitted to the Contract Manager.
- C. Prior to the fifteenth of each month, the Contractor shall submit documentation to the Agency's Contract Manager showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Agency's Contract Manager

showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement.

- D. The Contractor shall also submit to the Agency's Contract Manager documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Monthly DBE Trucking Verification, CEM-2404(F), form provided to the Contractor by the Department's Contract Manager

7. DBE Certification and De-certification Status

If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify the Contractor in writing with the date of de-certification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify the Contractor in writing with the date of certification. Any changes should be reported to the Department Contract Manager within 30 days.

1. When Reporting DBE Participation, Material or Supplies purchased from DBEs may count as follows:

- A. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease-agreement and not an ad hoc or Agreement by Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

2. When Reporting DBE Participation, Participation of DBE trucking companies may count as follows:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement.
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this section, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.